Supreme Court, U.S.
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No. 99-1741

In The

Supreme Court of the United States

SUNOCO, INC., SUN PIPE LINE COMPANY and ATLANTIC PIPELINE CORP.,

Petitioners,

v.

STEVEN SEYMOUR, GERALDINE SEYMOUR, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Pennsylvania Supreme Court, Middle District

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Whether the petitioners have failed to preserve for this Court's review any issue of denial of due process by failing to raise said issue properly before the Supreme Court of Pennsylvania.

Whether the procedures for appellate review of punitive damage awards, as well as the decision of the Supreme Court of Pennsylvania in this case reinstating a jury's award of punitive damages, after full briefing and argument, and under the standards applicable under the law of the Commonwealth of Pennsylvania, meet the requirements of due process of law under the United States Constitution.

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REASONS FOR DENYING THE WRIT

This Court should deny the Petition for Writ of Certiorari for two reasons. First, petitioners have failed to preserve any issue implicating an important federal question for review by this Court. Second, the issues presented by petitioners are not of constitutional dimension, but rather represent a contrivance of inapposite constitutional principles by which petitioners seek to obtain this Court's review of a question of sufficiency of evidence.

I.

PETITIONERS HAVE FAILED TO PRESERVE ANY ISSUE FOR THIS COURT'S REVIEW

Under Rule 10 of the Rules of the Supreme Court of United States, certiorari will be granted "only for compelling reasons," and, in the case of a petition seeking review of the decision of a state court of last resort, when the state court has decided "an important federal question" in a way that conflicts with the decision of another state court of last resort or with a United States court of appeals, or when the state court has decided an "important question of federal law" that has not been settled by this Court, or in a way that conflicts with the decisions of this Court.

Petitioners claim that a decision of the Supreme Court of Pennsylvania reinstating an award of punitive damages has deprived them of due process. However, no constitutional claim was ever addressed to the Supreme Court of Pennsylvania for its review. In the state court proceedings, at the trial level and on appeal, petitioners

attack on the jury's award of punitive damages was limited to the claim that the evidence was insufficient to support the verdict under Pennsylvania law which petitioners claimed requires a heightened standard of review of punitive damage awards. Thus, the issue before the Superior Court of Pennsylvania was a claim of insufficiency of evidence, and after the reversal, the issue upon which the Supreme Court of Pennsylvania permitted discretionary review was whether the Superior Court "violated its standard and scope of review and misapplied the [Pennsylvania] Supreme Court's holding with respect to the imposition of punitive damages. . . . " Respondents' Petition for Allowance of Appeal at 2.

Petitioners claim to have asserted an issue of constitutional dimension for the first time in their Petition for Reargument of the Judgment and Order of the Supreme Court of Pennsylvania, dated November 19, 1999. Petitioners cite as a Point of Law or Fact Overlooked or Misapprehended by the Court that the Supreme Court's Order does not "indicate that the Court applied the stringent standards needed under Pennsylvania law and under Due Process requirements for punitive damages, and its reference to *Adamski* [*v. Miller*, 681 A.2d 171 (Pa. 1996)] suggests that this Court did not sufficiently address these Due Process concerns." *See* Appendix A Excerpted Petition for Reargument filed with the Supreme Court of Pennsylvania at iv (A2).

The issue, as framed by petitioners in their Petition for Reargument, is no more than a criticism of the Order of the Supreme Court of Pennsylvania, rather than a claim that the decision itself deprived petitioners of due

process of law. Petitioners' claim, as reflected in the Petition for Reargument, does not focus on the merits of the decision, but on the manner in which Supreme Court delivered the decision – *i.e.*, a *per curiam* judgment order reversing the Superior Court and reinstating the jury's verdict on punitive damages. The precise nature of the issue cannot be ascertained, however, inasmuch as petitioners failed to brief any deprivation of due process issue in their Petition for Reargument. The petitioners' failure to brief the due process issue constitutes a waiver of the issue under Pennsylvania law. *Madison Construction Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 109 n.8 (Pa. 1999) (mention of an issue, particularly a significant issue, in a footnote does not preserve issue for review); *Denton v. Silver Stream Nursing And Rehab. Ctr.*, 739 A.2d 571, 575 (Pa. Super. 1999) (court will not consider merits of constitutional argument not argued in brief).

This Court's own precedent militates against review of petitioners' claims. Petitioner is obligated to demonstrate that the state court "had a fair opportunity to address the federal question that is sought to be presented. . . . " *Webb v. Webb*, 451 U.S. 493, 501 (1981). Petitioners' burden before this Court is to demonstrate that it presented the particular claim with "fair precision and in due time." *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 85 n.9 (1980). *See also Adams v. Robertson*, 520 U.S. 83 (1997) (reference to federal constitutional issues in state court briefs insufficient to preserve issue for review by Supreme Court of the United States).

Significantly, contrary to petitioners' representation to this Court, no due process argument was presented to the Supreme Court of Pennsylvania on its initial review.

See Appendix B Brief for Appellees (Petitioners herein) filed in the Supreme Court of Pennsylvania at 23-24 (B2-B3). Petitioners' sole mention of due process in the body of their Petition for Reargument is within the confines of a quotation from this Court's opinion in *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994), which quote was used to support a belatedly-raised claim that *Pennsylvania law* requires heightened scrutiny of punitive damage awards.[1] *See* Appendix A Excerpted Petition for Reargument filed in the Supreme Court of Pennsylvania at 4 (A4). The same quote was used for a similar purpose in a footnote in the Petitioner's Brief for Appellant filed with the Superior Court of Pennsylvania. *See* Appendix C Excerpted Brief for Appellants (Petitioners herein) filed in the Superior Court of Pennsylvania at 35-36 n.5 (C3-C4). Thus, as was the case in *Adams*, petitioners have failed to preserve any issue for this Court's review.

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[1] Petitioners' argument that Pennsylvania law requires heightened scrutiny by appellate courts was in the context of an assertion that Pennsylvania law ought to require clear and convincing evidence to sustain a punitive damage award. The citation to this Court's decision in *Honda Motor Company* actually undermines petitioners' argument. As this Court noted the case did not involve the question of what standard of review is constitutionally required. Nonetheless this Court cited standards of review that focus on gross excessiveness, passion or prejudice or against the great weight of the evidence as being compliant with this Court's decision in *Jackson v. Virginia*, 443 U.S. 307, 324 (1979). *Honda Motor Company*, 512 U.S. at 432 n.10.

II.

THE PENNSYLVANIA APPELLATE PROCESS OF REVIEW OF PUNITIVE DAMAGE AWARDS MEETS DUE PROCESS STANDARDS

The gist of petitioners' argument, presented for the first time in this Court, is that the appellate procedures for review of punitive damage awards in Pennsylvania fail to meet constitutional standards of due process. To support this premise, petitioners conceal the true nature of the review of punitive damage claims by the Pennsylvania appellate courts generally, and in this case, and misconstrue decisions of this Court to present an illogical and misleading argument.

Appellate review of punitive damage awards under Pennsylvania law is well defined. Under Pennsylvania law, punitive damages *must* be based on conduct that is outrageous, *i.e.*, conduct which is malicious, wanton, reckless, willful or oppressive. *Feld v. Merriam*, 485 A.2d 742, 748 (Pa. 1984). The court looks to the defendant's act, together with all the circumstances including the motive of the wrongdoers and the relations between the parties. *Feld*, 485 A.2d at 748. The determination of whether a person's actions rise to outrageous conduct lies within the sound discretion of the fact finder, but can be reversed by an appellate court where that discretion has been abused." *SHV Coal, Inc. v. Continental Grain Co.*, 587 A.2d 702, 705 (Pa. 1991). Moreover, Pennsylvania law provides for a new trial or for remittitur based on the excessiveness of a punitive damage award. The scope of relief is within the discretion of the trial court, but is subject to review by the appellate courts where there is an abuse of discretion or where an error of law has been

committed. *Sprague v. Walter*, 656 A.2d 890, 924 (Pa. Super. 1995).

Pennsylvania law regarding appellate review of punitive damage awards is in marked contrast to Oregon law which was deemed constitutionally deficient by this Court in *Honda Motor Company v. Oberg*. In *Honda Motor Company*, this Court reversed a decision of the Oregon Supreme Court upholding a jury award of punitive damages against a claim of excessiveness. The principal defect in the Oregon scheme of review of punitive damage awards was the absence of any review based on the excessiveness of the award itself. *Honda Motor Company*, 512 U.S. at 426-27.[2] Pennsylvania law, however, provides the remedy of remittitur, or even, new trial, when the excessiveness of a punitive damage verdict suggests the jury was guided by partiality, prejudice, mistake or corruption, *Sprague*, 656 A.2d at 924, or passion or prejudice, *DiSalle v. PG Publishing Co.*, 544 A.2d 1345, 1375 (Pa. Super. 1988).

Petitioners' argument that the Pennsylvania Supreme Court improperly relied on *Adamski v. Miller*, highlights the true nature of petitioners' claims and its request to this Court. Indeed, *Adamski* holds that questions of credibility and conflicts in the evidence are matters for the trial court and an appellate court is not to reweigh the

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[2] Petitioners cite a number of other decisions of this Court, all of which relate to due process challenges to punitive damage awards based on the excessiveness of the punitive damages. No claim of excessiveness was raised either in the state court or in the Petition for Writ of Certiorari, and therefore, these cases are inapposite.

evidence. The Pennsylvania Supreme Court in the present case reversed the decision of the Superior Court for precisely that reason – *i.e.*, the Superior Court reweighed the evidence in order to reach a different result than the trial court. Now petitioners ask this Court to reweigh the decision of the Pennsylvania Supreme Court and substitute this Court's judgment on the evidence presented. *See* Petition for Writ of Certiorari at 13-14. Were this Court to grant review in cases of this nature, this Court's docket would be laden with hundreds of thousands of cases where evidentiary disputes are dressed up in constitutional clothing.

CONCLUSION

For the reasons stated herein, respondents, Joseph and Jana Batchelder, respectfully request this Honorable Court to deny Petitioners' Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

55 M.D. APPEAL DOCKET 1999
56 M.D. APPEAL DOCKET 1999

STEVEN SEYMOUR AND GERALDINE SEYMOUR, et al.
v.
SUN COMPANY, INC. et al.

SUN PIPE LINE COMPANY
v.
REWIS & DAMBLY CONSTRUCTION, INC., et al.

JOSEPH BATCHELDER and JANA BATCHELDER
v.
SUN PIPE LINE COMPANY

NANCIE GROVE
v.
SUN COMPANY, INC., et al.

JOSEPH BATCHELDER AND JANA BATCHELDER
v.
ATLANTIC PIPELINE CORPORATION, et al.

APPLICATION FOR REARGUMENT OF APPELLEES SUN PIPE LINE COMPANY, SUN COMPANY, INC., SUN REFINING AND MARKETING COMPANY AND ATLANTIC PIPELINE CORPORATION

Application of Sun Pipe Line Company, Sun Company, Inc., Sun Refining and Marketing Company and Atlantic Pipeline Corporation for Reargument of the Judgment of the Supreme Court Entered on November 19, 1999 Reversing the Order of Superior Court entered June 1, 1998 at 2295

PHL 95, and Reinstating the Award of Punitive Damages by Order of the Court of Common Pleas of Delaware County, Civil Division, entered May 22, 1995 at Nos. 92-3598, 92-6131, 93-16345, 93-18844, 94-29

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II. SPECIFICATION WITH PARTICULARITY OF THE POINTS OF LAW OR FACT OVERLOOKED OR MISAPPREHENDED BY THE COURT

In its Order entered on November 19, 1999 remanding the case to the trial court for reinstatement of the award of punitive damages, this Honorable Court overlooked or misapprehended the following points of law or fact:

1. The Superior Court did not substitute its judgment for that of the jury in reversing the trial court's imposition of punitive damages against Appellees, but rather ruled that the trial court erred in submitting the issue of punitive damages to the jury for consideration because, as a matter of law, Appellees conduct did not reach the level of outrageousness or reckless indifference

required for the imposition of punitive damages in the Commonwealth of Pennsylvania.

2. The decision of the trial court, the arguments of the plaintiffs, and the dissenting opinion of the Superior Court were based on the wrong legal standard and facts not established by the evidence.

3. The decision in *Adamski v. Miller*, 545 Pa. 316, 681 A.2d 171 (1996), cited by this Honorable Court in reversing the decision of the Superior Court, is distinguishable from this case.

4. This Honorable Court's Order does not indicate the factual basis for its decision, nor does it indicate that the Court applied the stringent standards needed under Pennsylvania law and under Due Process requirements for punitive damages, and its reference to *Adamski* suggests that this Court did not sufficiently address these Due Process concerns.

* * *

C. Punitive Damage Awards Routinely Undergo Heightened Scrutiny

This Honorable Court has long recognized the need for judicial safeguards to protect against the imposition of punitive damages where they are unwarranted. *G.J.D.*, 552 Pa. at 177, 713 A.2d at 1131. Therefore, punitive damage verdicts undergo heightened scrutiny to ensure that there is "clear and convincing" evidence to fulfill the exacting "reckless indifference" standard. *See Martin*, 508 Pa. at 169, 494 A.2d at 1096; *Banas*, 348 Pa. Super. at 470, 502 A.2d at 640. The United States Supreme Court has

recognized the danger which punitive damage awards present:

> Punitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences. . . .

Honda Motor Co., Inc. v. Obert, 114 S. Ct. 2331, 2340-41 (1994). Accordingly, "the clear and convincing standard of proof, is an important check against unwarranted imposition of punitive damages. . . . " *Id. Honda Motor Co.* also cautions that a state's

> abrogation of a well-established common law protection against arbitrary deprivations of property raises a presumption that its procedures violate the Due Process Clause. As this Court has stated from its first Due Process cases, traditional practice provides a touchstone for constitutional analysis. [citations omitted] . . . When the absent procedures would have provided protection against arbitrary and inaccurate adjudication, this Court has not hesitated to find the proceedings violative of Due Process.

Id. at 2339-40.

Such "heightened scrutiny" has routinely been applied by this Honorable Court. For instance, in *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984), this Honorable

Court vacated a punitive damage award because, as a matter of law, the trial Court erred in

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APPENDIX B

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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55 M.D. APPEAL DOCKET 1999
56 M.D. APPEAL DOCKET 1999

STEVEN SEYMOUR AND GERALDINE SEYMOUR, et al.
Appellant
v.
SUN COMPANY, INC. et al.
Appellees

JOSEPH BATCHELDER and JANA BATCHELDER
Appellants
v.
SUN PIPE LINE COMPANY
Appellee

NANCIE GROVE
Appellant
v.
SUN COMPANY, INC., et al.
Appellees

BRIEF FOR APPELLEES SUN PIPE LINE COMPANY, SUN COMPANY, INC., SUN REFINING AND MARKETING COMPANY AND ATLANTIC PIPELINE CORPORATION

Appeal From The June 1, 1998 Order of the Superior Court of Pennsylvania, No. 2295 PHIL 95, Vacating the Award of Punitive Damages, and the Per Curium Order Dated August 6, 1998, denying Reargument.

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role in this as well. (R. 474a.) Dr. Deegan conceded that in his final analysis the pipeline leak was caused by the damage done by Norcini's front end loader and that the leak would not have happened "but for the damage". (R. 527a.)

In his investigation after the leak and criticism of Sun Pipe Line's analysis of the British Gas "smart pig" test, plaintiffs' pipeline expert, Douglas Chisholm, opined:

> In my opinion, Sun possessed information which indicates a wall loss not due to corrosion but probably, very probably, due to mechanical gouging and denting. . . .

(R. 614a.)

On cross examination, Dr. Chisholm testified that the people at Sun Pipe Line interpreted the British Gas test as best they could (R. 619a-620a; 627a); that they correctly identified many areas along the relevant portions of the pipeline for repair but that they missed one (R. 620a); that his criticism comes after the fact as a "Monday morning

quarterback" (R. 620a); that the British Gas test is completely voluntary "over and above the obligations of a pipeline" (R. 630a-631a); and, that the test was run voluntarily in Sun Pipe Line's effort to make the recently purchased Atlantic pipelines safer (632a).

SUMMARY OF ARGUMENT

There was no evidence in the record before the trial court to support a finding that Sun Pipe Line acted outrageously or with conscious disregard for the safety of others in the maintenance, operation and testing of its pipeline which ruptured in Edgmont Township, Delaware County in March of 1992. The trial court erred by viewing the facts from the retrospective hindsight advocated by the plaintiffs' experts rather than from the contemporaneous perspective of the Sun Pipe Line employees. The Superior Court, in contrast, properly viewed the facts of this case in accordance with the mandates of this Honorable Court, and held that the evidence on the record failed to establish that the Sun Pipe Line employees appreciated the risk created by Norcini's concealed negligence but nevertheless acted in flagrant disregard of the hidden danger presented thereby.

* * *

APPENDIX C

SUPERIOR COURT OF PENNSYLVANIA

NO. 2295 PHL 95

SEYMOUR, et al.
Appellees
v.
SUN COMPANY, INC., et al.
Appellants

SUN PIPE LINE COMPANY,
Appellant
v.
REWIS & DAMBLY CONSTRUCTION, INC., et al.,
Appellees

JOSEPH BATCHELDER and JANA BATCHELDER,
Appellees
v.
SUN PIPE LINE COMPANY,
Appellant

NANCIE GROVE,
Appellee
v.
SUN COMPANY, INC., et al.,
Appellants

JOSEPH and JANA BATCHELDER,
Appellees
v.
ATLANTIC PIPELINE CORP., et al.,
Appellants

BRIEF FOR APPELLANTS
SUN COMPANY, INC.
SUN PIPE LINE COMPANY
SUN REFINING AND MARKETING COMPANY
AND ATLANTIC PIPELINE CORP.

APPEAL FROM the JUDGMENTS AND ORDERS OF THE COURT OF COMMON PLEAS OF DELAWARE COUNTY CIVIL ACTION NOS. 92-3598; 92-6131; 93-16345; 93-18844; 94-29 DATED: MAY 12, 1995, MAY 24, 1995 AND MAY 25, 1995

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facts from the retrospective hindsight advocated by the plaintiffs' experts rather than from the contemporaneous perspective of the Sun Pipe Line employees.

According to the mandate of the Supreme Court, the state of mind of the actor is vital. When viewed in accordance with the mandates of the Supreme Court, the facts of this case fail to establish that the Sun Pipe Line employees appreciated the risk created by Norcini's negligence and nevertheless acted in flagrant disregard of the danger presented thereby.

Also by adopting plaintiffs' approach to punitive damages, the lower court failed to recognize that the public policy for punitive damages would be disserved in this case. Punitive damages are only imposed for outrageous conduct; those acts done with an evil motive and a

reckless indifference to the interests of others. By imposing this penalty on Sun Pipe Line, the court will in effect punish companies for conducting unrequired tests and deter voluntary proactive pipeline testing designed and intended to protect the public and the environment.

Feld v. Merriam, 506 Pa. 383, 485 A.2d 742 (1984), and *Martin v. Johns-Manville Corp.*, 508 Pa. 154, 494 A.2d 1088 (1985) require that this court grant defendants' motion for judgment notwithstanding the verdict on the jury's punitive damages award because plaintiffs' evidence fails as a matter of law to warrant the imposition of punitive damages.[5]

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[5] Punitive damage verdicts undergo heightened scrutiny, *Martin v. Johns-Manville Corp.*, 508 Pa. 154, 169, 494 A.2d 1088, 1096 (1985) (even in the rare instances in which they are justified, punitive damages subject to strict judicial controls).

An essential part of this strict review of punitive damages verdicts is the "clear and convincing" quality of the evidence required to fulfill the exacting "reckless indifference" standard at issue in this case. As the United States Supreme Court recently recognized in *Honda Motor Co., Inc. v. Oberg*, 114 S. Ct. 2331, 2340-2341 (1994), "Punitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences . . . ", and " . . . the clear and convincing standard of proof, is an important check against unwarranted imposition of punitive damages . . . ".

Honda Motor Co., Inc., also causations that a state's " . . . abrogation of a well-established common law protection against arbitrary deprivations of property raises a presumption that its procedures violate the Due Process Clause. As this Court has stated from its first-Due Process cases, traditional practice

In *Feld*, where the jury had awarded punitive damages in connection with the brutalities inflicted upon tenants of the defendant landlord, whose security system the jury found wanting, our Supreme Court vacated the punitive damages award and ordered a new trial. Holding that the trial Court erred in submitting the punitive damages claim to the jury, the Court declared, 506 Pa. at 395-396, 485 A.2d at 747-748:

> This Court has embraced the guideline of Section 908(2) of the Restatement (Second) of Torts regarding the imposition of punitive damages: "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." See *Chambers v. Montgomery*, 411 Pa. 339, 192A.2d 355 (1963). Punitive damages must be based on conduct which is " 'malicious,' 'wanton,' 'reckless,' 'willful,' or 'oppressive' . . . " *Id.* at 344-
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provides a touchstone for constitutional analysis. [citations omitted] . . . when the absent procedures would have provided protection against arbitrary and inaccurate adjudication, this Court has not hesitated to find the proceedings violative of Due Process", 114 S.Ct. at 2339-2340.